

Message

From: Mutter, Andrew [mutter.andrew@epa.gov]
Sent: 3/7/2019 9:59:15 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: FW: Daily News Clips, 3/7/19

From: Mack, Sara
Sent: Thursday, March 7, 2019 2:59:09 PM (UTC-07:00) Mountain Time (US & Canada)
To: AO OPA OMR CLIPS
Subject: Daily News Clips, 3/7/19

Air

[E&E News: Wehrum's old clients back 'ambient air' plan -- documents](#)

[Inside EPA: Legal Pact Ensures 2020 Election Will Decide Fate Of EPA Air Toxics Rules](#)

[MLive: Cancer worries grow as DEQ escalates toxic air investigation](#)

Chemicals

[Bloomberg Environment: EPA Chemicals Office Delays Draft Risk Reviews to End of Summer](#)

[Bloomberg Environment: EPA Says Ethylene Oxide Emissions Spike at Sterigenics Facility](#)

[InsideEPA: D.C. Circuit Poised To Hear Rival Refrigerant Makers' Fight Over HFC Rule](#)

Congress

[Bloomberg Environment: Congress Joins Fight Between Air Force and New Mexico](#)

[E&E News: Union storms the Hill ready for a fight](#)

[LA Times: Congress launches probe on why Texas and EPA stopped NASA from tracking Harvey pollution](#)

Fuel/Auto

[E&E News: DOJ penalizes Exxon Mobil for refinery fire violations](#)

[E&E News: White House to automakers: It's Trump or Calif. on emissions](#)

[New Jersey 101.5: NJ Sues ExxonMobil Again: 12+ Acres Contaminated in South Jersey](#)

[Oakland Press: EPA says 2017 model year vehicle mileage increased slightly](#)

[Reuters: Exclusive: U.S. EPA aims to curb biofuel credit market speculation via five-pillared draft rule](#)

[Reuters: UPDATE 1- EPA changed rules to help profitable refiners get biofuel waivers -lawsuit](#)

ORD

Washington Examiner: EPA announces major reorganization plan for science research off

PFAS

Inside EPA: Industry Fears 'Patchwork Quilt' For EPA Pharmaceutical Rule Implementation

E&E News: Lawmakers demand faster action on PFAS

Water

AP: Lawmakers: High costs slowing action on contaminant in water

Bloomberg Environment: House Moves Toward Big Expansion of Wastewater Grants

Air

E&E News Greenwire

Wehrum's old clients back 'ambient air' plan – documents

<https://www.eenews.net/greenwire/2019/03/07/stories/1060123437>

Sean Reilly

Posted: March 7, 2019

Three decades ago, congressional auditors slammed an obscure EPA policy for effectively allowing companies to circumvent air pollution control requirements. But the policy, which defines "ambient air" for regulatory purposes, remained in place.

Now, at industry's prompting, the Trump administration is poised to dramatically expand its scope.

Traditionally, EPA has defined ambient air as "that portion of the atmosphere to which the public has access." Exempted are areas owned or controlled by a pollution source where "access is precluded by a fence or other physical barriers," under an interpretation dating back to at least 1980.

But draft guidance quietly released by EPA in November 2018 would widen that exemption to include areas that could be off-limits to the public because of drone oversight, security patrols or "rugged terrain" (*E&E News PM*, Nov. 9, 2018). The purpose is to streamline a key air quality permitting program.

Among those backing the proposed changes are a number of trade groups that were previously clients of EPA air chief Bill Wehrum when he was a lawyer in private practice, as well as another attorney at his old firm, according to documents obtained by E&E News under the Freedom of Information Act.

The documents reflect comments received by EPA after the draft's release, but not previously made public. Together with several other groups, for example, the American Forest and Paper Association voiced appreciation for EPA's "willingness to update and modernize its historical approach to evaluating the impacts of projects on ambient air," according to a joint January submission. In a separate filing, the American Fuel and Petrochemical Manufacturers said the change was warranted, given that video monitoring and other electronic surveillance technologies were rare in 1980.

Also supportive was Joseph Stanko, a partner at Hunton Andrews Kurth LLP who represents another organization known as the NAAQS [National Ambient Air Quality Standards] Implementation Coalition. In his comments, Stanko called the draft changes "desirable" but urged EPA to go further in light of a trend toward tighter air quality standards.

The paper and petrochemical manufacturers associations are among about three dozen industry clients listed by Wehrum on a recusal statement dated last September, 10 months after he left Hunton Andrews Kurth to take the EPA air job. In

emails today, spokespeople for both associations said that top executives there had had no contact with Wehrum on the issue since he rejoined EPA. By publication time, Stanko had not replied to email and voicemail messages left late yesterday afternoon posing the same question.

Also by publication time, an EPA spokesman had not answered emailed questions asking whether Wehrum was involved in writing the guidance and when the agency intends to issue the final version.

Under the terms of his recusal statement, Wehrum is barred from participating until this November "in any particular matter involving specific parties" that he or Hunton Andrews Kurth represented in the preceding two years. A number of other business organizations, ranging from the South Carolina Manufacturers Alliance to the Fertilizer Institute, not listed on Wehrum's recusal statement, also submitted comments in support of the draft revisions to the ambient air policy.

It is unclear whether EPA is already putting the changes in place. While described as a draft, the November guidance also says that "this revised policy should be implemented by EPA regional offices and delegated state and local air agencies," for the issuance of Prevention of Significant Deterioration permits under the agency's New Source Review program.

Whatever their status, the changes are sparking opposition from environmental organizations, Indian tribes and some state and regional regulators.

The National Tribal Air Association anticipates that the proposal would allow air pollution sources "to expand the amount of area around each source that is exempted from ambient air, thus limiting the detection of the sources' air pollution further and bypassing" air quality violations, according to its comments. If EPA does move forward with the proposal, the agency should first analyze the potential environmental effects, the association said.

The Natural Resources Defense Council and three other environmental groups jointly accused EPA of engaging in an illegal "subterfuge" by attempting to change the policy without going through a formal rulemaking process that would require advance public notice.

They also pointed to a 1989 [report](#) by the congressional watchdog agency now known as the Government Accountability Office. That report, titled "EPA's Ambient Air Policy Results in Additional Pollution," said the agency's fence line policy allowed exclusion of "large tracts of company-controlled land" from Clean Air Act requirements, thus allowing businesses to use property acquisition as "a pollution control technique." The result was "higher emissions limits than would otherwise have been permitted," the report said.

GAO recommended that EPA launch a formal rulemaking process "to redefine ambient air in a manner that is more protective of the environment." The agency appears not to have followed through. In their comments, the NRDC and other groups labeled the draft guidance "a gross expansion of EPA interpretations that themselves lack any basis in statutory or regulatory language."

Inside EPA

Legal Pact Ensures 2020 Election Will Decide Fate Of EPA Air Toxics Rules

<https://insideepa.com/weekly-focus/legal-pact-ensures-2020-election-will-decide-fate-epa-air-toxics-rules>

Stuart Parker

Posted: March 7, 2019

EPA and environmentalists have agreed to a draft legal settlement imposing deadlines in 2021 and later to review agency air toxics rules, ensuring the 2020 presidential election will decide whether a re-elected Trump administration will continue leaving such rules unchanged or a potential Democratic administration might tighten them.

The Clean Air Act mandates EPA to review its existing air toxics rules eight years after their implementation to assess whether health risks from a sector's emissions remain, or whether new technology exists to cut emissions, and if so, the agency can tighten the regulations. But EPA is years behind schedule for reviewing many sectors' air toxics rules, prompting environmentalists to file a series of lawsuits to secure binding deadlines for the reviews.

Under President Donald Trump, EPA has either proposed or concluded the Clean Air Act-mandated risk and technology reviews (RTRs) by largely leaving the rules in place or offering more flexibilities.

The latest draft consent decree between environmentalists and EPA sets deadlines from 2020 through 2023 for EPA to propose or finalize RTRs for several sectors, with just one final rule due during Trump's current term. That means the outcome of the presidential election will be key to the fate of the rules at issue in the consent decree, because a second Trump term would likely continue the pattern of leaving the rules in place.

In contrast, a Democratic victory in 2020 might spur the next EPA to tighten the rules given Democrats' criticism of the Trump EPA's deregulatory agenda and growing concerns by community groups that the agency is not adequately considering the risks posed by emissions of substances such as ethylene oxide.

One environmentalist acknowledges concern that the Trump EPA is not tightening standards under air toxics rules, but says groups will continue to push RTR deadline suits regardless of their timing.

The source says that "waiting to see if the political winds shift" with a new administration before filing such deadline suits "is just not a good strategy." Some of the rules at issue have not been reviewed in decades, and emissions control technology has moved on since then — something EPA must acknowledge in its reviews, the source says.

It "might be all right if there is a changing of the guard at the agency" with a new administration conducting the reviews in the latest decree, the source says. But a Democratic victory in 2020 is not something environmentalists can count on, and the priority is securing legally binding deadlines for EPA to conduct the RTRs, the source adds.

A second environmentalist, who worked at the agency for 15 years helping to write regulations, says, "I worked at EPA under four administrations. All of us at EPA saw the pendulum swing back and forth over the years between political support for and opposition to strengthening environmental regulation. EPA's reviews of existing regulations and adoptions of new regulations take years. It is impossible to know how the pendulum will swing over the many years that EPA is reviewing and potentially revising regulations." The source notes that by the time all the deadlines in the latest consent decree are met, "the political environment may well be substantially different from what it is today."

But the source adds, "One thing however is a constant at EPA that is not correlated with whoever is president and whoever controls Congress: EPA's penchant for inertia," arguing that most of the agency's Clean Air Act and Clean Water Act rules are the result of court orders following deadline suits.

"It would be a fool's errand for the environmental community to not continue to press EPA in court to act while waiting 'for the right political time' to so press," the source says.

"Additionally, as those who have worked on writing EPA regulations well know, EPA's internal dynamic to the substance of regulations, over the long term, is quite consistent. The EPA culture is to evaluate existing regulations and not-yet-regulated issues with an eye to 'what incremental improvements in environmental protection can we enact without excessively angering the powerful interests we'll effect?'

"This mindset does not change based on who is in the White House. While this leads to frustratingly slow improvements in environmental protection, it is certainly better than no advances at all. It is important that in all seasons that the environmental community continue to press EPA to act — regardless of who is president."

Consent Decree

In the latest proposed consent decree to be filed with the U.S. District Court for the Northern District of California, Our Children's Earth Foundation (OCE) aims to settle litigation it brought against EPA for its failure to conduct reviews of air rules for industries including iron foundries and pipeline facilities.

OCE filed suit claiming EPA missed Clean Air Act deadlines for reviewing national emissions standards for hazardous air pollutants (NESHAP) air toxics rules and related new source performance standards (NSPS).

The group claimed EPA missed applicable deadlines to review the NSPS rules for Bulk Gasoline Terminals and Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants, and the NESHAPs for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations); Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; Iron and Steel Foundries Area Sources; and Wood Preserving Area Sources.

Major sources of air toxics are those emitting 10 tons per year (tpy) of one HAP, or 25 tpy of a combination of HAPs. Area sources emit HAPs below these thresholds, and are often subject to less-stringent regulation.

EPA commits to propose to either modify its NSPS rule for electric arc furnaces or leave it unchanged by Nov. 1, 2021— after a potential transition to a new presidential administration. Or EPA could determine that a review is "not appropriate in light of readily available information on the efficacy" of the existing standard. Should EPA propose changes to the NSPS rule, or propose to leave it unchanged, it must finalize those decisions by Nov. 1, 2022.

The consent decree commits the agency to similar deadlines for the bulk gasoline terminals NSPS of Dec. 1, 2021, for a proposed decision and Dec. 1, 2022 for a final decision.

For the NESHAP rules, EPA would have to issue final rules either revising the rules or leaving them unchanged for the various sectors ranging from June 2021 to March 1, 2023, with the exception of the Iron and Steel Foundries Area Sources rule, for which EPA must finalize a decision by August 31, 2020.

EPA published the proposed consent decree in the March 5 *Federal Register* and it is subject to a 30-day comment period, after which the agency will review input before finalizing the pact.

Just one of the rules at issue in the latest decree -- the RTR for the iron and steel foundries NESHAP -- is due for final action in Trump's first term. And the administration's decisions on several air toxics rules reviews suggest a pattern through which EPA is deciding to leave the rules in place, or make minor changes.

Completed Reviews

Two recently-issued EPA RTR rules, for the wood coatings and fiberglass production sectors, reflect this trend. For example, EPA published in the March 4 *Register* its final RTR for its Surface Coating of Wood Building Products NESHAP. The rule leaves emissions limits unchanged, eases some reporting and compliance requirements, but eliminates a regulatory exemption for air pollution spikes during periods of startup, shutdown and malfunction (SSM) to comply with federal court rulings that have found such waivers unlawful. EPA is moving to electronic reporting and allowing use of an "alternative compliance equation" that would to add an alternative equation within the requirements for facilities meeting the "emission rate without add-on controls" compliance option under the current standards. The new equation would "more adequately represent the HAP amounts emitted by this type of surface coating or any similar coating," EPA says.

Facilities using this alternative option would have "to conduct an initial performance test to demonstrate compliance. Those same facilities are also required to conduct repeat performance testing every 5 years to update/verify the process-specific emission factor."

Similarly, EPA on Feb. 28 finalized its RTR rule for the Wet-Formed Fiberglass Mat Production NESHAP, leaving emissions limits unchanged, easing some reporting requirements and ending SSM exemptions.

For fiberglass production, EPA provides a reduced compliance reporting obligation "when deviations from applicable standards occur," changing from "from a quarterly (four times a year) to a semiannual (twice a year) basis."

Further, "parametric monitoring," which does not monitor HAPs directly, but rather monitors the performance of control equipment, "would no longer be required during periods when a non-HAP binder is being used. These provisions are being finalized as proposed, with minor corrections and clarifications." — *Stuart Parker* (sparker@lwpnews.com)

MLive

Cancer worries grow as DEQ escalates toxic air investigation

<https://www.mlive.com/news/2019/03/cancer-worries-grow-as-deq-escalates-toxic-air-investigation.html>

By Garret Ellison | gellison@mlive.com

GRAND RAPIDS, MI — For the past 20 years, Larry and Lorna Conkle have lived on Gold Ave. SW about 200 yards from a medical device manufacturing plant on the edge of downtown Grand Rapids that they never before associated with any kind of danger.

Now, state air quality regulators want to place a special canister in their yard to measure toxic emissions of ethylene oxide (EtO), a known carcinogen, leaving the plant at troubling levels.

The peace they felt at home is gone. The couple worry about letting grandchildren visit. They worry about the safety of produce from their garden. They wonder if the colon cancer that killed Lorna's ex-husband at 46 after he lived nearly 30 years across the street was related.

"Now, it's scary," said Lorna Conkle. "Our house is almost paid off. Who is going to want to buy it now if we want to sell?"

The Conkles were among the roughly 100 people who attended a meeting hosted by the Michigan Department of Environmental Quality in Grand Rapids on Wednesday evening, March 6, to discuss air pollution coming from Viant Medical, a global medical device maker which operates a facility at 520 Watson Street SW on the city's West Side.

The meeting was held at Grand Valley State University's Eberhard Center, which is located within a radius around the Viant plant where the DEQ says computer modeling shows that levels of EtO in the ambient air are high enough to pose a long-term health risk.

The DEQ investigation has issued four air pollution violation notices to the company in the past two years and says monetary fines are likely.

"This has been the number one priority for the Air Quality Division since we began this investigation in August last year," said Chris Ethridge, division field operations supervisor.

State regulators are widening investigation into air pollution coming from a downtown medical device manufacturer.

Viant uses EtO to sterilize medical equipment. The invisible and odorless gas is known to cause breast and blood cancers, including multiple myeloma, leukemia and non-hodgkin's lymphoma, according to the state Department of Health and Human Services.

While some EtO is escaping the facility through the roof stack, the DEQ says the real problem is "fugitive emissions," or hazardous gases escaping from inside the building which are vented to the outside air. Ethridge said EtO is being released when package carts leave one of the five factory sterilization chambers and are readied for shipping.

"It's safe to assume the fugitive emissions are not being controlled at all," he said.

Ethridge said the DEQ has been in communication with the Michigan Occupational Safety and Health Administration (MIOSHA), which is "aware of the situation."

"We are hopeful they are doing a full investigation as well to ensure worker safety at the plant," Ethridge said.

The state agency had two representatives at the meeting, but they would not comment on whether MIOSHA was conducting an investigation at Viant. According to the U.S. Department of Labor website, an OSHA case was opened on Jan. 17.

Joe Dykehouse's aunt, Theresa Filut, died of brain cancer on March 4 after working 30 years at the Viant plant, which previously operated as Medronic, Vention and MedPlast.

Filut previously struggled with lung cancer and Dykehouse said her former co-workers at the plant were in contact recently to communicate about their own struggles with cancer.

"It's very terrible," Dykehouse said. "They need to shut the place down. If that's what caused my aunt's cancer, who's to say who else hasn't been diagnosed yet that's working there."

This week, Viant announced in a letter to residents that it will discontinue sterilizing medical equipment at the facility by the year end.

The DEQ said it's planning to place 20 Summa air sampling canisters at various locations outside the plant later this month. The canisters will sample EtO levels in the ambient air and, if necessary, could be deployed more than once.

"Our primary interest is trying to characterize what concentrations are out there in places people might be for years, or a lifetime," said Robert Sills, DEQ Air Toxics Unit supervisor.

Sills and Deb Mackenzie-Taylor, a toxicologist with the DHHS, reiterated several times that the concern is for exposure over a period of years. The data on levels seen in the air around the plant, while above the state screening level, are not an immediate health risk.

People in the area shouldn't change habits or routines, Sills said.

"We haven't seen any indication now or going forward that people need to be concerned with short-term exposure," he said.

Nonetheless, the facility's proximity to Grand Valley's Pew Campus prompted the university to hire a local engineering company to test indoor air at several campus locations downtown. The university says it has been closely monitoring the situation.

Numerous Grand Valley students attended the meeting Wednesday. Michaelyn Mankel, 23, expressed concern that she's unknowingly been exposed to EtO while living downtown at several homes in close proximity to the Viant facility over the past few years.

Mankel asked the several pointed questions about the health of Viant employees and why the state hadn't tried to force closure of the facility

"I feel like I have total déjà vu from the immediate response that was made to PFAS," Mankel said. "I don't understand how a company continually violating regulations put in place to protect health and protect us from a known human carcinogen could still be in full operation within a block of my house."

Viant did not send obvious representatives to the meeting, and, through a public relations firm, said the DEQ did not invite the company nor give it "an opportunity to speak or present any information." The DEQ says the company was welcome to attend, but that the presentation panel was reserved for state and local regulators.

The DEQ says Viant has been cooperative, but it's clear the company is not pleased about the regulatory enforcement actions. In its letter to residents, Viant cast doubts on the validity of the DEQ air dispersion modeling that indicates

elevated concentrations of EtO could be present in the air moving into nearby neighborhoods where the Kent County Health Department is already studying incidences of cancer.

The county has factored the EtO emissions into a cancer incidence review that began last year at the request of West Side residents worried about seemingly high occurrence rates of cancer among neighbors and their proximity to the Butterworth Landfill Superfund site

Viant spokesperson John Truscott said the company is having independent experts review the modeling because of disagreements about DEQ conclusions.

In November, state computer modeling indicated that emissions from building vents likely disperse in a roughly 2,000-foot radius around the facility at concentrations up to 150 times the new Environmental Protection Agency screening level over the course of a year.

“The DEQ approach didn’t follow EPA protocols for this type of testing,” Truscott said. “However, I was encouraged to hear they’re going to do some up-wind testing to determine background levels. They haven’t done that to date and that would help them make a better determination of actual levels. It’s important because of the heavy traffic volumes in the area and the fact that auto exhaust contains ethylene oxide.”

“We’re hoping the GVSU independent tests help clarify some of the issues and show compliance with the permit,” Truscott added.

Mary Ann Dolehanty, director of the Air Quality Division, said the DEQ is comfortable with its conclusions, but also wants to collect more data.

“We followed the right methodology. We put together a plan. It’s quite similar to what the EPA did with the facility in Illinois,” Dolehanty said, referencing the EPA investigation of Sterigenics in the Chicago suburb of Willowbrook, where elevated levels of EtO used to sterilize packaging have also sparked health concerns.

“If (Viant) is concerned about the monitoring we have done, they are welcome to do their own,” said Dolehanty. “We would help and evaluate and be part of that.”

“They haven’t at this point.”

Chemicals

Bloomberg Environment

EPA Chemicals Office Delays Draft Risk Reviews to End of Summer

<https://news.bloombergenvironment.com/environment-and-energy/epa-chemicals-office-delays-draft-risk-reviews-to-end-of-summer>

Pat Rizzuto

Posted: March 7, 2019, 12:25pm

- Nine chemical risk reviews delayed 6 to 9 months
- EPA also issuing more information on coloring agent

The EPA won’t release nine draft chemical risk evaluations that were originally slated for 2018 until the end of the summer, Cathy Fehrenbacher, acting director of risk assessment in the EPA’s chemicals office said.

The agency issued one of the 10 draft evaluations, a review of pigment violet 29 used in coatings and paints, last November.

The updated risk evaluation release schedule, which Fehrenbacher mentioned at the GlobalChem conference March 6 in Washington, means it is taking longer than the agency anticipated to complete 10 risk evaluations mandated under the 2016 Toxic Substances Control Act amendments.

If the EPA finds the chemicals pose risks, the agency could take steps to regulate or restrict them.

Summer of Peer Reviews

The agency expects to have independent toxicologists, exposure analysts, and other experts critique the 10 draft risk evaluations in the May-August time frame, Alexandra Dunn, assistant administrator for the Environmental Protection Agency's Office of Chemical Safety and Pollution Prevention, said March 7.

Some similar chemicals may be grouped together when peer reviewed, Dunn said.

She referred to the scientific panels of peer reviewers that will evaluate the science underlying the EPA's conclusions about whether those 10 chemicals—or certain uses of them—pose an unreasonable risk of injuring people or the environment.

More Public Data Coming

Dunn and Fehrenbacher updated attendees in this year's Global Chemical Regulations Conference about the status of many tasks that the amended TSCA required the agency to complete this year.

The EPA anticipates releasing more information to the public regarding its rationales for concluding that current uses of pigment violet 29 wouldn't be likely to cause harm, Dunn added.

In its draft risk evaluation of the pigment, the EPA incorrectly kept some details confidential that it received from health and safety studies provided to European regulators, Dunn said.

To contact the reporter on this story: Pat Rizzuto in Washington at prizzuto@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Steven Gibb at sgibb@bloombergenvironment.com; Rob Tricchinelli at rttricchinelli@bloombergenvironment.com

Bloomberg Environment

EPA Says Ethylene Oxide Emissions Spike at Sterigenics Facility

<https://news.bloombergenvironment.com/environment-and-energy/epa-says-ethylene-oxide-emissions-spike-at-sterigenics-facility-1>

Stephen Joyce

Posted: March 7, 2019, 3:25pm

- New data shows emissions more than doubled at one monitoring site
- Ongoing federal litigation over whether to re-open facility

Ethylene oxide emissions at some monitoring sites near a Sterigenics U.S. LLC facility in Willowbrook, Ill. spiked to their highest levels in nearly a year in February.

Air monitoring [data](#) released March 7 by the Environmental Protection Agency showed emissions of the flammable and colorless gas more than doubled from previous high levels at one monitoring site.

Testing at one of the EPA's monitoring sites in Willowbrook showed emissions hit 26.4 micrograms per cubic meter on Feb. 5, and 14.2 µg/m³ on Jan. 15, up from 11.7 µg/m³ in December.

EPA has concluded emissions of ethylene oxide, used to sterilize medical equipment and make products such as antifreeze, can elevate risks of cancer.

The Illinois Environmental Protection Agency ordered the Sterigenics facility shut down Feb. 15, which the company challenged Feb. 18 in the U.S. District Court for the Northern District of Illinois.

Because he is "not confident" the sealed order will be upheld upon judicial review, U.S. Rep. Dan Lipinski (D-Ill.) told Bloomberg Environment he is pressing the federal EPA to shutter the facility—something it has authorization to do under the Clean Air Act.

To contact the reporter on this story: Stephen Joyce in Chicago at sjoyce@bloomberglaw.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Susan Bruninga at sbruninga@bloombergenvironment.com; Anna Yukhananov at ayukhananov@bloombergenvironment.com

InsideEPA

D.C. Circuit Poised To Hear Rival Refrigerant Makers' Fight Over HFC Rule

<https://insideepa.com/daily-news/dc-circuit-poised-hear-rival-refrigerant-makers%E2%80%9999-fight-over-hfc-rule>

Stuart Parker

Posted March 7, 2019

A federal appeals court is poised to hear oral argument March 8 in a lawsuit where rival manufacturers of climate-warming hydrofluorocarbon (HFC) refrigerants are battling over the merits of EPA's policy on replacing the substances, with some companies seeking to partially vacate the Obama-era rule while others are defending it.

Litigants filed final briefs last month in the U.S. Court of Appeals for the District of Columbia Circuit case, *Mexichem Fluor, et al. v. EPA*. The briefs reprise arguments for and against EPA's policy on replacement refrigerants, with chemical companies Mexichem and Arkema challenging the 2016 rule that changed the status of some HFCs in different end-uses to "unacceptable." Rival chemical firms Chemours and Honeywell, and environmental group Natural Resources Defense Council (NRDC), are defending the Obama HFC replacement policy.

In the case, the Trump administration is siding with Mexichem and Arkema in calling for partial vacatur of the rule, arguing some provisions conflict with a prior D.C. Circuit ruling.

Mexichem and Arkema argue that the court's 2-1 2017 ruling in a case known as *Mexichem I* compels the court to remand and partially vacate the 2016 rule, which they say is inconsistent with the earlier ruling. The court in that ruling held that EPA may not require substitution of refrigerants that have already replaced ozone-depleting chemicals under the agency's significant new alternatives program.

EPA in its Feb. 6 final reply brief says that the court must follow its own precedent set in *Mexichem I* and revise the 2016 rule to make it consistent with the prior ruling. The court in the earlier suit found that the 2015 Obama EPA rule at issue in *Mexichem I* changed EPA policy and re-opened the policy to judicial review.

"Because *Mexichem I* said, unambiguously and repeatedly, that the 2015 Rule represented a change in EPA's approach from the 1994 Framework Rule, the Court is bound by this decision and Respondent-Intervenors are estopped from advocating that the Court reach a different, inconsistent conclusion," EPA says. Chemours, Honeywell and NRDC therefore "are foreclosed from re-litigating whether the Court in *Mexichem I* had jurisdiction."

Mexichem and Arkema in their Feb. 6 reply brief agree with EPA, saying, "the 2016 Rule is invalid insofar as it requires HFCs to be replaced." The court in *Mexichem I* unambiguously determined that it had jurisdiction, the firms argue, and their commercial rivals may not re-open the issue.

Chemours, Honeywell and NRDC counter that the present suit, *Mexichem II*, is untimely because it challenges an underlying EPA policy on refrigerant replacement adopted in a 1994 regulation. Because the challenge is years too late, the court lacks jurisdiction to hear the present case, they argue.

Chemours, Honeywell and NRDC in their joint Feb. 6 final brief say, “[w]hile Petitioners claim to be challenging the 2016 Rule, the substance of their challenge is to the 1994 Rule, which was promulgated almost a quarter-century ago. Because their challenge to the 1994 Rule is almost 25 years late, this Court lacks the authority to review it.”

Further, “*Mexichem I* did not address, or state any holding on, the Court’s jurisdiction to invalidate the regulatory prohibition on any person’s use of a substitute in a use listed as ‘unacceptable,’ which was promulgated in the 1994 Rule, not in the 2015 Rule.” — *Stuart Parker* (sparker@iwpnews.com)

Congress

Bloomberg Environment

Congress Joins Fight Between Air Force and New Mexico

<https://news.bloombergenvironment.com/environment-and-energy/congress-joins-fight-between-air-force-and-new-mexico>

David Schultz

Posted March 6, 2019, 6:33 PM

New Mexico lawmakers’ bill deals with Pentagon’s chemical contamination
State battles Air Force over contamination from nonstick chemical use
Congress is getting involved in an ongoing dispute between the U.S. Air Force and the State of New Mexico over who should pay to clean up water contaminated with toxic nonstick chemicals.

New Mexico Senators Tom Udall (D) and Martin Heinrich (D), along with Rep. Ben Ray Lujan (D-N.M.), introduced bills March 6 that push the EPA and Department of Defense to move more quickly to address military bases in their state that have water contaminated with chemicals known as per- and polyfluoroalkyl substances, or PFAS.

The bills, which were not yet posted on the online congressional legislative tracker, would require the Secretary of Defense to submit a plan and budget request to start cleaning up these chemicals.

Several months ago, the New Mexico Environment Department issued a violation notice to the Air Force over contamination at two bases in the state. The Air Force responded by suing the state in federal court, arguing New Mexico does not have the authority to penalize it. That suit is ongoing.

The PFAS problems in New Mexico also came up during a March 6 hearing at a House Oversight subcommittee. David Ross, the top water regulator at the Environmental Protection Agency, said he’s been in discussions with the Department of Agriculture on how PFAS may affect livestock after reports that ranchers in New Mexico had to euthanize cows that drank contaminated water.

Air Force spokeswoman Maj. Lindy Singleton declined to comment for the story, citing a policy against weighing in on pending legislation.

The EPA did not immediately respond to a request for comment.

—With assistance from Sylvia Carignan.

E&E News

Union storms the Hill ready for a fight

<https://www.eenews.net/eedaily/stories/1060123393>

Kevin Bogardus, E&E News reporter

Published: Thursday, March 7, 2019

Members of the National Treasury Employees Union are on Capitol Hill this week to lobby in support of better pay and benefits for federal employees.

The government workers union is pushing several bills proposed in Congress that could help federal employees, including one piece of legislation that would grant them paid parental leave and another that would institute a 3.6 percent pay raise in 2020.

NTEU is also opposing efforts to curtail its members' retirement benefits and collective bargaining rights in the federal workplace.

Speaking at his union's legislative conference yesterday, NTEU President Tony Reardon said the group is ready to go to bat for its members.

"We fight against the discrimination and the harassment you face. We fight to ensure that your workplace is secure and safe. Equally important, we fight for your ability to make a decent living, to take care of your family and your future," Reardon said.

The partial government shutdown, which lasted an unprecedented 35 days until its end in January, has also motivated the labor movement. Reardon said the funding lapse was terrible for federal employees at affected agencies, who went without pay, as well as the country overall.

"This shutdown was a travesty. It had a profoundly negative impact on federal employees, on our citizens and on our nation's economy," Reardon said. He added, however, that there was a "silver lining" in that Americans learned the value of federal employees and the services they provide once they were gone.

"The American people, see, they got a good look at your faces and at your hearts. They saw your pride, but they also saw your fear. They witnessed your struggle and heard and felt your pain," Reardon said, who praised his members for speaking out during the funding lapse.

NTEU is also pursuing litigation against the Trump administration in the wake of the shutdown.

In one lawsuit, the union is challenging the constitutionality of requiring certain "excepted" employees to work without pay during a funding lapse. NTEU alleges in another lawsuit that the federal government violated labor law by not paying workers during the shutdown.

NTEU and other unions are also defending their legal victory in overturning various provisions of executive orders issued by President Trump that targeted federal employees in the U.S. Court of Appeals for the District of Columbia Circuit.

Rep. John Lewis (D-Ga.), a civil rights icon, also addressed the members yesterday. He urged them to stay active.

"Now is the time for unions, for organized workers, for the American people to get into good trouble, necessary trouble to save our country, save democracy. We can do better. We must do better," Lewis said.

NTEU members and Democratic lawmakers will be at a rally later today on the west lawn of the Capitol. The union represents 150,000 federal employees in 33 agencies, including EPA and the National Park Service.

In a press briefing after his speech, Reardon acknowledged the group expects more fights ahead.

The Trump administration is likely to release its budget proposal for fiscal 2020 next week. Past budget plans from this administration have proposed deep cuts to agencies' funding as well as limits on employees' pay and benefits.

He said if there was a pay freeze proposed in Trump's budget, his union would mobilize in opposition. NTEU and other federal worker unions lobbied Congress and won a 1.9 percent pay raise for federal employees in 2019, overturning a Trump pay freeze, which Reardon called "a tremendous win."

Still, the union president said for that 2019 pay raise to go into effect, Trump needs to issue an executive order to start the process, which he has not done yet.

"These folks deserve the pay. Let's get them paid," Reardon said.

During this last shutdown, federal employees, who were advised to stay off work email, were often left in the dark by their agencies. Reardon said there was little communication between NTEU and the Trump administration during the funding lapse.

"It was not a lot. It was, candidly, very little. So there was not a lot of communication" with the Office of Personnel Management and the Office of Management and Budget, Reardon said. Asked if he thought that would change in a future shutdown, Reardon said he would not anticipate it.

"I would always be supportive of having more communication," he said. "Do I expect it? No."

Los Angeles Times

Congress launches probe on why Texas and EPA stopped NASA from tracking Harvey pollution

<https://www.latimes.com/local/california/la-me-nasa-congress-houston-epa-hurricane-harvey-20190306-story.html>

By Susanne Rust and Louis Sahagun

MAR 06, 2019 | 5:45 PM

Congressional Democrats are launching an investigation into the fate of NASA's offer to fly a pollution-analyzing jet over the Houston region in the aftermath of Hurricane Harvey.

The investigation was spurred by a Los Angeles Times report Tuesday revealing that officials from the U.S. Environmental Protection Agency and Texas Commission on Environmental Quality declined the NASA offer, arguing data collected by the space agency could cause "confusion" and might "overlap" with their own analysis — which was showing only a few, isolated spots of concern.

On Wednesday, members of the House Committee on Science, Space and Technology, sent letters to the EPA, NASA and Texas environmental officials asking for all documents relating to the agencies' decision not to fly.

"Instead of gathering the most accurate air quality data possible, State and Federal officials apparently decided they would rather not know about potential toxic chemical releases..." wrote Eddie Bernice Johnson (D-Texas), Lizzie Fletcher (D-Texas) and Mikie Sherrill (D-NJ) in a letter to EPA Administrator Andrew Wheeler, NASA Administrator Jim Bridenstine and Michael Honeycutt, the Texas environmental agency's director of toxicology.

"If this is true, it is not only an embarrassment, it is unacceptable," they wrote.

Reached Wednesday, EPA spokesman John Konkus said that his agency did not decline the offer. He said the EPA was there to assist state environmental officials, who thought the NASA monitoring would be redundant to its own efforts.

However, emails obtained via a Times public records request to NASA show that David Gray, the deputy administrator for EPA's Texas region, and the chair of the agency's Emergency Response Center after the storm, declined the offer.

In a Sept. 11, 2017, email to Honeycutt, NASA and EPA officials, Gray wrote, "EPA concurs with your assessment and we will not plan to ask NASA to conduct this mission."

It is also clear from emails that NASA officials understood Gray's response to mean they could not fly.

In an email from later that day, Barry Lefer, the NASA program manager for the jet, wrote to NASA officials that Gray had contacted the space agency "to indicate EPA's desire that the NASA DC-8 not conduct air quality measurement flights in Houston."

Officials from NASA and the state environmental agency could not be reached for comment Wednesday evening. At least one environmental group criticized Texas and EPA for not welcoming the assistance.

"EPA and the Texas Commission on Environmental Quality knew air pollution was one of the unseen dangers of Hurricane Harvey but chose not to use every available tool to discover it," said Elena Craft, senior director of health and climate at Environmental Defense Fund, a group that coordinated air pollution sampling in the Houston region after Harvey.

Jennifer Horney, a professor of epidemiology and the University of Delaware who conducted research about the environmental impacts of Hurricane Harvey on local neighborhoods, also welcomed the Congressional investigation.

"It is critical that we have a better understanding of the environmental contamination and long-term health effects associated with natural disasters," she said.

Fuel/Auto

E&E News

DOJ penalizes Exxon Mobil for refinery fire violations

<https://www.eenews.net/energywire/stories/1060123391>

Pamela King, E&E News reporter

Exxon Mobil Corp. will pay \$616,000 and take other steps to address Clean Air Act violations resulting from a fatal 2013 blaze at the company's Beaumont, Texas, refinery.

After the fire, which killed two workers and injured 10, an EPA inspection revealed alleged releases of toxic substances. The Justice Department and EPA yesterday announced a settlement that will require Exxon to pay a civil penalty, make \$730,000 in safety investments and hire a third-party compliance auditor.

"The deaths and injuries resulting from the 2013 fire at Exxon Mobil's Beaumont refinery are a terrible tragedy," Jeffrey Bossert Clark, assistant attorney general for DOJ's Environment and Natural Resources Division, said in a statement last night.

"Today's settlement sends a clear message to companies handling hazardous substances in their operations that they must take the necessary steps to protect their workers under the environmental laws or face the consequences of vigorous enforcement," he said.

A proposed consent decree outlining the settlement is currently pending before the U.S. District Court for the Eastern District of Texas.

"We rely on companies to carefully follow environmental regulations, which are designed — above all — to protect human health," said EPA Region 6 Administrator Anne Idsal.

"As the incident at Exxon Mobil's facility shows, failing to comply with these rules can have devastating consequences," she said.

E&E News Greenwire

White House to automakers: It's Trump or Calif. on emissions

<https://www.eenews.net/greenwire/2019/03/07/stories/1060123419>

Ryan Beene, Bloomberg

Posted: March 7, 2019

The White House has issued an us-versus-them challenge to carmakers: back an administration plan to roll back fuel-economy standards or risk President Donald Trump's wrath by siding with California's stringent emissions requirements.

That message was delivered during a tense conference call between Trump administration officials and auto executives in late February, according to five people familiar with the call who spoke on the condition they not be identified discussing the private conversation.

The administration has terminated months of talks between federal regulators and California officials to maintain a common standard. Automakers have urged the two sides to reach an agreement to avert a legal battle with the state, which covets its unique ability to establish its own emissions rules.

Joining the call for the White House were senior officials with the Environmental Protection Agency and the National Highway Traffic Safety Administration, one of the people said.

The industry officials on the call were told that auto companies should either proclaim their support for the Trump administration's direction on the efficiency mandates, or back California's tougher and more costly regulations, the people said.

White House representatives and the Alliance of Automobile Manufacturers declined to comment.

The request has added to industry anxiety about getting caught in a conflict between Trump and the nation's biggest auto market, the people said. The president is also reviewing the findings of a Commerce Department inquiry into whether imported cars and parts threaten national security, which automakers worry could provide the basis for new tariffs.

The Trump administration in August recommend capping tailpipe carbon emissions standards and fuel economy requirements at 37 miles per gallon after 2020, instead of rising to roughly 47 mpg under rules adopted by the Obama administration.

The joint proposal by the EPA and the traffic safety administration also called for revoking California's authority to set its own greenhouse standards for vehicles, a move that could lead to yet another legal battle between Washington and Sacramento.

Nearly all automakers have urged both sides to strike a deal to avert a messy legal battle that could roil business plans heavily reliant on predictability.

The White House call to automakers came after the administration declared that months of talks with the California Air Resources Board in search of a compromise were over, citing insufficient progress.

"Despite the administration's best efforts to reach a common-sense solution, it is time to acknowledge that CARB has failed to put forward a productive alternative," the White House said in its Feb. 21 statement.

CARB spokesman Stanley Young at the time said the administration had broken off communications before Christmas, "and never responded to our suggested areas of compromise — or offered any compromise proposal at all."

Most automakers have called for revisions to ease the so-called national program of fuel economy and tailpipe greenhouse gas emissions standards in light of cheap gasoline and surging SUV sales that weren't expected when the rules were agreed upon in 2011. Yet the companies have stopped short of endorsing the administration's recommendation to freeze requirements after 2020 and revoke California's authority to set its own rules.

Ford Motor Co. declined to comment on the White House's outreach, but Rachel McCleery, a spokeswoman for the company, said it still wanted the Trump administration to work with California and maintain national mileage and emissions standards.

"A coordinated program with every stakeholder is in the best interest of Ford's customers, and is the best path forward to achieve reductions in carbon dioxide emissions and support critical investments in new technologies," McCleery said. — *Ryan Beene, Bloomberg*

New Jersey 101.5

NJ Sues ExxonMobil Again: 12+ Acres Contaminated in South Jersey

<https://nj1015.com/nj-sues-exxonmobil-again-12-acres-contaminated-in-south-jersey/>

Sergio Bichao

Posted: March 7, 2019

TRENTON — State officials have filed a new environmental lawsuit against ExxonMobil, this time faulting the oil company for pollution that is spreading from its 12-acre property in Gloucester County.

The Department of Environmental Protection says the company began dumping on the Lail site in East Greenwich and Paulsboro as far back as the 1950s but the toxic legacy endures.

A spokeswoman for the company on Thursday called the lawsuit "surprising" because ExxonMobil "has been working extensively with New Jersey Department of Environment Protection and the U.S. Environmental Protection Agency to clean up and restore the Lail site."

-ADVERTISEMENT-

In 2015, the state settled a similar Natural Resource Damages lawsuit against the company. That litigation concerned contamination at the Bayway and Bayonne refineries and other facilities. The \$225 million settlement, a fraction of what the state had spent years seeking in damages, did not protect the company from future litigation over the Lail property, the state Attorney General's Office said Thursday.

The settlement approved by Gov. Chris Christie's administration was opposed by environmentalists, who believed that the state should have obtained a greater payment. In 2017, voters approved a ballot referendum to require that settlements from natural resources lawsuits be used only for cleanups.

"We're going to bring the hammer down on polluters and hold them responsible for the damage they've caused in the Garden State," Attorney General Gurbir Grewal said in a statement.

"We have strong laws on the books to require companies to clean up their mess, and we're going to keep using them. That includes revitalizing New Jersey's longstanding efforts to take ExxonMobil to task for contamination across the state. While the last Administration settled many claims with Exxon, they did not settle them all, and our action today continues the environmental efforts that New Jersey began over a decade ago."

Grewal's office has filed five such lawsuits since 2018.

State officials said Mobil Corp. used the Lail property to dump drums of petroleum products and hazardous substances that leaked into "once pristine wetlands and waterways" in the tidal area of the Delaware Estuary, the Mantua Creek and the Delaware River. ExxonMobil purchased the land in 1999 after having used it for decades.

The site has been cleaned up over the years and the drums were removed in the 1990s after the state reached an agreement with the property owner and ExxonMobil, but state officials said inspections in 2017 found groundwater, soil, wetlands and sediment contaminated with cancer-causing polychlorinated biphenyl, or PCBs, which were banned in 1979. PCBs also were detected in fish from the waterways.

ExxonMobil spokeswoman Sarah Nordin said Thursday that the company has spent \$47 million on cleaning up, sampling and monitoring the site, which it continues to do under the supervision of the state and the Environmental Protection Agency.

"ExxonMobil has conducted significant clean up and restoration at the site, including excavation, removing sediments, and replanting native vegetation," Nordin said.

"ExxonMobil takes its environmental responsibilities seriously and complies with all environmental laws."

The lawsuit says inspectors found an aluminosilicate material that was as thick as 9 feet in some areas.

The complaint says the pollution affects drinking water and recreation.

The lawsuit, filed in Superior Court in Gloucester County, seeks an unspecified amount to cover the cost of cleaning up the contamination.

Oakland Press

EPA says 2017 model year vehicle mileage increased slightly

https://www.theoaklandpress.com/news/state/epa-says-model-year-vehicle-mileage-increased-slightly/article_22445b1c-40e2-11e9-910a-ff4a1526bde0.html

Tom Krisher

Posted: March 7, 2019, 2:00pm

DETROIT (AP) — New vehicles in the U.S. from the 2017 model year averaged slightly better gas mileage than the previous year, rising to a record 24.9 mpg, according to an annual report from the Environmental Protection Agency.

But the mileage rose only 0.2 mpg, and environmental groups say it fell short of a 1 mpg increase required under standards enacted during the Obama administration.

To make up the difference, automakers used credits for zero emissions vehicles and other fuel-saving measures that aren't included in EPA test cycles. The agency and the Department of Transportation say that's evidence the industry will have trouble meeting standards as they rise through 2025.

The Trump administration has proposed freezing the standards at 2021 levels.

But environmental groups and the state of California say the standards should remain in place and that automakers have the technology to meet them. The administration's move to freeze them , while not finalized, already has brought a court challenge from California and other states that follow its standards.

The administration last month broke off negotiations with California on fuel economy and greenhouse gas emissions, and the matter probably will be tied up in the courts for years.

After ending the talks with California, administration officials held a conference call with automakers and began pressuring them to take its side in the dispute, according to four people who were either on the call or briefed on it. They spoke on condition about the Feb. 21 private call because of fear of retaliation from the administration.

On that call, a White House official told industry representatives that they had to decide whether they were in favor of "regulatory relief" or whether they wanted to side with California, according to two of the four people. One described the call as "testy" and the other said the industry was told it needed to take a side.

No one said any threats were made, but the industry fears tariffs on imported vehicles and parts, and one person pointed out that the Obama administration also pressured the industry to agree to fuel economy requirements.

The White House declined to comment on the specifics of conversations the administration is having with groups with stakes in the matter.

In the meantime, the standoff over fuel economy leaves the auto industry uncertain over what vehicles it must build. For now, the Obama-era regulations remain in effect, and auto companies are not sure what standards they have to meet for 2022 and beyond. A decision by the current administration is expected this spring.

Automakers have said they want the federal government to reach agreement on one national standard with California, which has authority to set its own mileage and emissions standards under the Clean Air Act. The administration is likely to challenge that.

EPA Administrator Andrew Wheeler said in a statement Wednesday that the agency's proposed changes "will allow the industry to meet aggressive yet attainable standards, reduce the price of new vehicles and help more Americans purchase cleaner, safer and more efficient vehicles."

But environment groups said that even with use of the credits, the industry is meeting the standards and can continue to do so.

"While the Trump administration is moving to gut the clean car standards, its own data shows the current standards are working. Automakers are innovating and improving the performance of their fleets, and tailpipe emissions continue to plummet," said Luke Tonachel, director for clean vehicles and fuels at the Natural Resources Defense Council.

The EPA and the auto industry both say that as Americans shift from more efficient cars to trucks and SUVs, the industry is having trouble meeting the standards. The EPA report said that SUV sales reached a record 43 percent in 2017, with cars and wagons falling to 41 percent, about half their market share in 1975. The rest were trucks.

But Tonachel said the Obama-era standards are flexible, reducing requirements for automakers if they sell more trucks and SUVs.

"They are selling more trucks yet still meeting the standards because the standards automatically adjust to the mix of vehicles they sell," he said.

The EPA report said that car mileage increased by 1 mpg in 2017, while SUV mileage increased only 0.1 mpg.

Only Honda, Subaru and BMW met the mileage and pollution standards without using credits, according to the report.

Reuters

Exclusive: U.S. EPA aims to curb biofuel credit market speculation via five-pillared draft rule

<https://www.reuters.com/article/us-usa-ethanol-epa-exclusive/exclusive-us-epa-aims-to-curb-biofuel-credit-market-speculation-via-five-pillared-draft-rule-idUSKCN1QO20D>

Reporting by Humeyra Pamuk in Washington; Writing by Richard Valdmanis

Posted March 7, 2019, 10:58 am

WASHINGTON (Reuters) - The U.S. Environmental Protection Agency's proposal to curb speculation in the biofuel credit market will include five measures aimed at preventing hoarding of the credits and improving monitoring to identify potential market manipulation, a source familiar with the matter told Reuters.

The proposed measures, sent to the White House for review on Monday, include requiring quarterly, instead of annual, retirement or sales of the credits -- called Renewable Identification Numbers, or RINs -- and blocking certain non-obligated parties from purchasing RINs.

Other measures call for RIN buyers to disclose their holdings to EPA if they acquire large volumes of RINs in excess of a certain threshold -- likely 120 percent of their obligation - and improved deal reporting to the agency so it can identify and prevent efforts at market manipulation, the source said.

Along with the RIN market reform proposals, the EPA on Monday sent a draft of its proposed rule allowing year-round sales of higher ethanol blends of gasoline, also known as E15.

Reuters

UPDATE 1- EPA changed rules to help profitable refiners get biofuel waivers -lawsuit

<https://www.cnbc.com/2019/03/07/reuters-america-update-1-epa-changed-rules-to-help-profitable-refiners-get-biofuel-waivers-lawsuit.html>

Jarrett Renshaw

Posted: March 7, 2019, 4:20pm

March 7 (Reuters) - U.S. environmental regulators quietly changed the way they assess applications from refineries for waivers from the nation's biofuels law, making it possible for highly profitable plants to secure lucrative exemptions, according to court documents filed by a biofuels trade group on Thursday.

The new documents, part of a lawsuit that began last year, could provide the most complete explanation to date of how the Environmental Protection Agency vastly expanded the number of small refinery hardship biofuel waivers under former Administrator Scott Pruitt, including by granting exemptions to oil majors Exxon Mobil and Chevron.

The expansion of the waiver program saved the oil industry hundreds of millions of dollars but angered farmers in the nation's heartland, who said it crushed the credit prices that are an integral part of the ethanol industry.

According to the documents, filed by the Advanced Biofuels Association (ABFA), the EPA in 2017 stopped considering whether compliance with the Renewable Fuel Standard (RFS) would prevent a refinery from making money and being competitive.

Instead, the agency considered primarily whether compliance would cause a "disproportionate" impact on the facility, an easier hurdle to clear.

Under the RFS, refiners must mix biofuels like ethanol with their gasoline and diesel, but smaller refineries can be exempted if they can prove that complying would cause them measurable financial harm.

ABFA, which represents 35 companies responsible for 4.4 billion gallons of renewable fuel production around the globe, is asking a federal judge to rule whether the EPA's expansion of the waiver program was legal, which they argue depresses demand for their biofuel.

The Department of Energy traditionally scored the hardship applications on a two-prong matrix that considered whether the RFS posed a disproportionate hardship, and whether the plant could remain viable if required to comply.

Prior to May 2017, a refinery would have to pass both tests to get an exemption, ABFA alleged, citing EPA correspondence with a refiner it said it had obtained.

"In prior decisions, EPA considered that a small refinery could not show disproportionate economic hardship without showing an effect on viability, but we are changing our approach," the EPA wrote in 2017 to an unnamed refiner, according to an excerpt included in the court filing.

The EPA went on to say that RFS obligations may impose a disproportionate economic hardship when it is disproportionately difficult for a refinery to comply with its RFS obligations even if the refinery's operations are not significantly impaired.

The EPA turned over documents related to 48 applications for waivers to the ABFA as part of the legal discovery process. In 24 cases, the Energy Department gave the applicant a viability score of zero, meaning the RFS would have no impact on the refinery's ability to stay competitive and profitable, but the EPA still granted the waiver, ABFA alleged in the court documents.

The EPA also routinely ignored the department's recommendations to grant partial exemptions and instead granted full exemptions, ABFA alleged in court documents.

An EPA official said the agency had no comment.

The trade group has asked a federal court in Washington to rule on the legality of the expansion of the hardship waivers under Pruitt. The scoring system has faced judicial scrutiny in the past, with judges in different circuits siding with and against the agency.

In an often cited case, the 10th U.S. Circuit Court of Appeals in Denver ruled in 2017 that the EPA had in the past used too strict a definition of viability that required the applicant to prove complying with the RFS would cause the plant to shut or the company to file for bankruptcy.

While the EPA did not announce the changes publicly, the agency clearly sent the message to refiners, ABFA said. Oil majors such as Chevron and Exxon Mobil, who did not apply for waivers in the past, were granted exemptions at their smaller refineries, Reuters previously reported.

Billionaire Carl Icahn, a one-time Trump adviser who helped Pruitt land the job at the EPA, was also granted exemptions at his smaller refineries owned by CVR Energy after previously been denied them by the Obama administration.

In all, the number of exemptions granted went from 7 in 2015 to at least 29 in 2017, EPA data shows.

The EPA is set to decide on 37 additional pending applications for 2018 by the end of the month, a move that will be closely watched by the corn and oil industries. (Reporting by Jarrett Renshaw in New York Editing by Jeffrey Benkoe and Phil Berlowitz)

Washington Examiner

EPA announces major reorganization plan for science research office

<https://www.washingtonexaminer.com/policy/energy/epa-announces-major-reorganization-plan-for-science-research-office>

Josh Siegel

Posted: March 7, 2019, 2:30pm

The Environmental Protection Agency announced a major reorganization plan on Thursday, combining two key science offices.

The agency says that the reorganization is meant to reduce bureaucracy and boost efficiency, contrary to environmentalist groups' fears that it will try to bias the scientific process.

The *Washington Examiner* exclusively learned of the reorganization plan for the EPA's Office of Research and Development, which agency officials plan to reveal to staff at a town hall meeting Thursday afternoon.

EPA's Office of Research and Development (ORD) is the agency's largest office, charged with conducting scientific research across all aspects of environmental issues. It hadn't been reorganized since 1995.

The change announced Thursday will consolidate the office's 13 units into eight. Most significantly, it merges the Office of the Science Advisor with the Office of Science Policy, creating a new unit that houses both, called the Office of Science Advisor, Policy, and Engagement.

A second new office will combine multiple internal offices and the National Center for Environmental Research, which tests the effects of chemical exposure on people, into the Office of Resource Management.

Jennifer Orme-Zavaleta, who leads the EPA's Office of Research and Development as its principal deputy assistant administrator for science, said the original structure created "siloed approaches" and "inefficient redundancies," with too many separate units reporting to her.

"It's bringing organizations with similar functions together," Orme-Zavaleta told the *Washington Examiner*. "The type of research we do is not impacted. The work we are doing is not changing. We are not really changing what research we do, but we are changing how we manage what we do."

When plans for the reorganization leaked last fall, environmental groups expressed concern that merging the science advisor's functions with science policy could threaten the independence of the agency's scientists whose research is supposed to inform policy. If the functions are too close, critics say, political policymakers could interfere with the science advisor's job of ensuring the best science is considered in its regulatory decisions.

"You want scientific research to be as independent as possible from the regulators," said Michael Halpern, deputy director of the Center for Science and Democracy at the Union of Concerned Scientists.

But Halpern said the official reorganization plan revealed Thursday is "better than once feared."

Under the plan, the science adviser continues to directly report to EPA Administrator Andrew Wheeler. That's because in recent years, due to a change implemented in the second half of the Obama administration, the science adviser post has actually been filled by the head of the Office of Research and Development, meaning they are the same position, with a direct report to the EPA administrator.

Orme-Zavaleta, a senior career official at EPA since 1981 who is a doctor and scientist by trade, is currently occupying that combined role as acting science advisor and head of Office of the Research and Development because President Trump has not nominated an assistant administrator for the office.

Orme-Zavaleta insisted that as acting science adviser, she had ample access to Wheeler, with regular meetings.

She said EPA consulted with career staff on the reorganization, which will not result in any job losses.

EPA is holding listening sessions on the plan with Office of Research and Development staff in the coming months, and will consult with Congress about it., with the goal of implementing the reorganization by the beginning of fiscal year 2020.

“The overarching goal is increasing the impact we have in supporting the agency's mission with the right kind of science,” Orme-Zavaleta said.

Environmental groups and Democrats said Thursday they would wait and see before judging EPA’s plans.

“Reorganizations aren't necessarily a bad thing, and the fact there were so many direct reports to the head of ORD was something that merited scrutiny,” Halpern said. “The real question is will the functions that are in the office of science advisor continue to have the same agency-wide access and stature as they do now. We will see how that plays out.”

Critics have accused EPA of downplaying science with other policy initiatives, and giving more input to industry. One controversial proposal being finalized by EPA would block the agency from using scientific studies that do not make public the raw data used in research, which opponents say would restrict the research the agency can use in drafting environmental regulations.

In addition, the nonpartisan Government Accountability Office last month released a report finding EPA political officials had delayed an agency research unit, known as the Integrated Risk Information System, from releasing studies on the health risks of certain chemicals.

A spokesperson for Sen. Tom Carper of Delaware, the top Democrat of the Environment and Public Works Committee, which oversees the EPA’s budget, said the senator hopes the reorganization can “address inefficiencies and political interference” that were “recently identified” in the IRIS program.

PFAS

Inside EPA

Industry Fears 'Patchwork Quilt' For EPA Pharmaceutical Rule Implementation

<https://insideepa.com/daily-news/industry-fears-patchwork-quilt-epa-pharmaceutical-rule-implementation>

Lara Beaven

Posted: March 7, 2019

Some states will opt to retain their existing requirements for waste pharmaceuticals that are broader or more stringent than the approach EPA took in its recently finalized rule it finalized late last year, an industry attorney says, making it more challenging for large health sector companies that do business in multiple states.

“A patchwork quilt is coming,” Elise Paeffgen, an attorney with Alston and Bird, said during a March 6 webinar on the rule sponsored by the Food and Drug Law Institute and the Environmental Law Institute.

Paeffgen said there is a lot of uncertainty about states' adoption of EPA's [hazardous waste pharmaceutical rule](#) and whether they will maintain their more stringent requirements, adding that industry groups need to lobby state governments to ensure consistent approaches.

It is “important to have strong industry advocacy for an even playing field,” she said.

At the same time, EPA officials say they have been “overwhelmed” with questions about the rule and its implementation and are developing responses in a frequently asked questions (FAQ) document.

EPA's Management Standards for Hazardous Waste Pharmaceuticals, signed in December and published in the Federal Register Feb. 22, sets requirements under the Resource Conservation & Recovery Act (RCRA) for managing hazardous waste pharmaceuticals by healthcare facilities and reverse distributors, which collect prescription pharmaceuticals to facilitate and verify they are eligible for credit from manufacturers.

The final RCRA rule excludes from the definition of solid waste -- and corresponding waste requirements -- non-prescription medication and other unsold retail items, such as pool chemicals, mercury-containing light bulbs and pesticides, that are sent by healthcare facilities to reverse logistics centers, which evaluate unsold retail items for resale in secondary markets.

But the rule does not provide this exemption to prescription pharmaceuticals, retaining a proposed Obama-era definition that those medications, sent from healthcare facilities to reverse distributors, are solid waste. The rule's definition of healthcare facility includes both places that provide care for humans and animals as well as retail facilities such as pharmacies and retailers of over-the-counter medications.

Additionally, the rule exempts Food and Drug Administration-approved nicotine replacement therapies, such as patches and gum, from hazardous waste disposal requirements and prohibits the “sewerage” of waste pharmaceuticals.

Reverse distributors generally have been supportive of the rule while the retail sector has raised concerns about EPA's decision to create different requirements for prescription pharmaceuticals and over-the-counter (OTC) medication.

The sewer ban will become effective in all states Aug. 21 with the other provisions of the rule also becoming effective in Iowa and Alaska, the two states without delegated RCRA programs, Brian Knieser, a physical scientist with the EPA's Office of Resource Conservation and Recovery (ORCR), said on the webinar.

RCRA authorized states must adopt by July 1, 2021, most of the other provisions in the rule but are not required to adopt the nicotine provisions because those are less stringent than current requirements, although EPA expects most states will eventually adopt the nicotine provisions, he said.

Delegated States

However, RCRA allows states with delegated programs to adopt state regulations that are more stringent than the federal ones, and Paefgen noted several states already regulate waste pharmaceuticals more stringently than EPA.

For example, California distinguishes between pharmaceuticals that contain ingredients that are a RCRA-listed hazardous waste and those that contain ingredients on a state list of hazardous materials. Pharmaceuticals in the first category cannot be sent a reverse distributor while California-only ones can.

In Colorado, if any P- or U-listed chemical is an active ingredient, even at a very low concentration, it is considered hazardous waste, and hazardous waste pharmaceuticals cannot be sent to a reverse distributor.

New Mexico prohibits expired hazardous waste pharmaceuticals from being sent to reverse distributors, and Washington state has a broad definition of hazardous waste that includes characteristics for solid corrosivity and two state-specific characteristics for toxicity and persistence.

Paefgen and others also questioned whether OTC medications could be sent to a reverse distributor instead of a reverse logistics center.

EPA in the rule makes a clear distinction between unsold retail items, including nonprescription pharmaceuticals, and prescription pharmaceuticals.

Unsold retail items can in some cases be reused in secondary markets and thus they are not considered waste. It is up to reverse logistics centers to analyze secondary markets and assess the suitability of the unsold retail items in those markets, Laura Stanley, an economist with ORCR said.

But prescription medications are not reused and all of these pharmaceuticals become waste at the healthcare facility, Stanley said. However, because they still have value and healthcare facilities can receive credit for them from pharmaceutical manufacturers, EPA has taken a flexible approach with its waste handling requirements, she said.

Pharmaceuticals that are in their original manufacturer packaging (except for recalls), are undispensed, and are unexpired or less than one year past expiration, can be sent to a reverse distributor, which determines whether any credit is due the healthcare facility. Once the pharmaceuticals have been evaluated, the reverse distributor sends them to a hazardous waste treatment, storage or disposal facility.

Kristin Fitzgerald, an environmental protection specialist with ORCR, said EPA “didn't really contemplate” a scenario where OTC medications were sent to a reverse distributor because commenters on the proposed rule said reverse distribution and reverse logistics were two very different processes.

EPA is "in the process of developing an answer" to that question and others, which will be released as FAQ documents, Fitzgerald said.

She said the agency has been "overwhelmed" with questions about the rule and staff are unable to respond to individual questions. But the questions are being compiled and will be answered in the FAQs. -- *Lara Beaven*(lbeaven@iwpnews.com)

E&E News

Lawmakers demand faster action on PFAS

<https://www.eenews.net/eedaily/stories/1060123361>

Cecelia Smith-Schoenwalder, E&E News reporter

EPA and the Defense Department need to act faster on a family of chemicals contaminating drinking water, Oversight and Reform Committee Democrats said yesterday.

Members were examining per- and polyfluoroalkyl substances, or PFAS, which are often called "forever chemicals" because of their persistence in the environment. The chemicals can be found in nonstick cookware, waterproof clothing and firefighting foam used during training exercises on military bases.

"We should all be angry that those who are willing to pay the ultimate price for our country have to worry about exposure to toxic chemicals," Environment Subcommittee Chairman Harley Rouda (D-Calif.) said during a hearing.

The Environmental Working Group, in anticipation, released a map of PFAS contamination at 106 military sites at levels above EPA's nonbinding health advisory of 70 parts per trillion.

The chemicals have been linked to cancer, low fertility and thyroid disease. "The information available is sufficiently alarming to trigger immediate action from this administration," Rouda said.

David Ross, EPA's assistant administrator for the Office of Water, disagreed. "Despite their everyday use, the body of science necessary to fully understand and regulate these chemicals is not yet as robust as it needs to be," he said.

EPA received criticism last month for its action plan to tackle the chemicals (Greenwire, Feb. 14). The plan promised to make a regulatory decision on whether to limit two of the best-studied chemicals — PFOA and PFOS — in drinking water by the end of the year.

Some experts, however, have said that the regulatory process could take up to a decade before guidelines are finalized.

Hill scrutiny

In the Senate yesterday, lawmakers called for all the documents from four agencies related to EPA's action plan to "better understand the view of the agencies."

Democratic Sens. Tom Carper of Delaware, Patty Murray of Washington, Jack Reed of Rhode Island and Gary Peters of Michigan demanded papers from EPA, DOD, the Department of Health and Human Services, and the Office of Management and Budget.

Dave Ross. Photo credit: House Oversight and Reform Committee

David Ross, EPA Office of Water assistant administrator, during a hearing yesterday. Oversight and Reform Committee

Ross skirted questions from Rep. Katie Hill (D-Calif.) on the role of David Dunlap, a political deputy in EPA's research office who previously worked for Koch Industries Inc., in decisions related to PFAS.

Democrats this week urged EPA to investigate whether Dunlap violated his recusal terms by participating in the health assessment of formaldehyde, which Koch produced through a subsidiary (Greenwire, March 5).

Lawmakers during the Oversight hearing also questioned Maureen Sullivan, DOD's deputy assistant secretary for environment.

"It's my view that the Defense Department, in particular, has so far failed to act with the required urgency to address this growing public health and environmental crisis," said Rep. Dan Kildee (D-Mich.), co-chair of the bipartisan Congressional PFAS Task Force, who testified.

Sullivan defended DOD's work, noting that it is just one of the many users of the firefighting foam containing PFAS. She said the Pentagon no longer requires the use of the foam in training and testing.

Mass. cleanup

Separately, the group Public Employees for Environmental Responsibility released statements from EPA indicating help for a Massachusetts town contaminated with PFAS.

Documents PEER obtained under the Freedom of Information Act showed EPA and DOD officials struggling to address the contamination at a former military base.

Ayer, Mass., officials in June 2018 asked EPA to hold DOD accountable for the contamination and the cost of cleanup and testing.

The next month, then-EPA Region 1 Administrator Alexandra Dunn wrote to Sullivan urging DOD to address the issues at Fort Devens, or "EPA will pursue other options, including issuance of a Safe Drinking Water Act order."

Sullivan responded that DOD doesn't have the authority to pay the town for any cleanup or testing efforts. She said an order under the Safe Drinking Water Act would be "unnecessary and inconsistent."

EPA told PEER this week that DOD will assist the town by removing contamination in wells and providing funding for water treatment technology.

"PEER will be working to make the Army's treatment of Ayer standard for all military-caused PFAS contamination across the country," said New England Director Kyla Bennett.

Water

Associated Press

Lawmakers: High costs slowing action on contaminant in water

<https://www.apnews.com/951c6a5718ea469185d5e82cb90d48e9>

By Ellen Knickmeyer

Rep. Harley Rouda, D-Calif., speaks during a House Oversight and Reform subcommittee hearing on PFAS chemicals and their risks on Wednesday, March 6, 2019, on Capitol Hill in Washington. (AP Photo/Sait Serkan Gurbuz)
WASHINGTON (AP) — Cleaning up and protecting U.S. drinking water from a class of toxic chemicals used in many household items could cost in the tens of billions of dollars nationally, including \$2 billion for the Department of Defense alone, witnesses testified Wednesday before a House panel urging the federal government to move more quickly on the cleanup.

Rep. Harley Rouda, the California Democrat chairing the House Oversight and Reform environment subcommittee, told reporters after the hearing "it's clear" the high costs were slowing any federal efforts to regulate and clean up the toxic chemicals, which are found in a range of goods, including nonstick pans, stain-resistant clothing, dental floss and food containers. They also are in firefighting foam used by the military to battle jet-fuel fires.

The compounds, called perfluoroalkyl and polyfluoroalkyl substances, or PFAS, have been used for decades. Water sampling shows the contaminant — also called the "forever chemicals" because they will take thousands of years to break down — has seeped into many public water systems in the United States and globally, including around military bases and industries.

Environmental Protection Agency chief Andrew Wheeler told reporters Tuesday that the agency was moving toward establishing federal limits for some kinds of the contaminant in drinking water. States and local communities say they need a mandatory EPA limit to start full-scale cleanup and protections against the compounds.

“There’s no indication of when the process might actually be complete,” Rouda told EPA and Defense Department officials testifying before the panel. In the meantime, military officials “are passing the buck to the EPA” rather than conducting a national cleanup of bases that have high levels of PFAS contamination, he said.

Democratic Rep. Dan Kildee of Michigan said veterans and families are increasingly fearful of PFAS contamination around bases. “The Defense Department in particular has so far failed to act with the required urgency to address this growing problem,” he said.

The Trump administration has been under increasing pressure to start regulating the toxic class of compounds since last year, when a draft federal toxicology report found some kinds of the widely used chemicals were harmful at levels much lower than the federal government’s current advisory level. The federal Agency for Toxic Substances and Disease Registry cited studies linking PFAS contamination to liver problems, low birth weight, some cancers and other health issues.

Rep. Brian Fitzpatrick, a Pennsylvania Republican and co-chairman of a congressional PFAS task force, called the forever compound “one of the most widespread public health crises” that the U.S. faces.

But Fitzpatrick cautioned against setting any PFAS limits too low, saying it would cost tens of billions of dollars to bring water systems into compliance.

David Ross, assistant administrator of the EPA’s water office, defended the agency’s decision to continue researching the compounds ahead of any formal regulatory moves.

“The science to fully understand these chemicals ... is not yet as robust as it needs to be,” Ross said. He said resolving PFAS contamination was a national priority for the agency.

Communities and states say the EPA has done little concrete to start tackling the problem. In a tweet Wednesday, Mayor Rob Allen of Hoosick Falls, New York, where industrial releases are blamed for dangerously high PFAS levels in water, evoked the compound’s nickname in saying “it will take ‘forever’ for EPA to act on its responsibility to regulate them.”

The Defense Department has identified 401 military sites where PFAS was used, and found 24 U.S. military drinking-water systems around the world with PFAS levels above the current U.S. advisory level, Maureen Sullivan, the deputy assistant secretary of defense, told lawmakers.

U.S. military officials at those bases were providing bottled water or other alternate water supplies, Sullivan said.

Cleaning up bases contaminated by two of the best-studied versions of PFAS would cost about \$2 billion, she said.

Kildee, whose state of Michigan has been one of the most active in testing for PFAS and tackling contamination, said the Pentagon had yet to request the money for that cleanup.

Some states and local communities hosting military bases accuse the military of using the lack of any mandatory federal limit for PFAS in drinking water as a reason to deny Pentagon responsibility for cleanup.

New Mexico sued the Air Force on Tuesday over PFAS contamination around two bases in that state.

Sullivan said the Pentagon currently is discouraging the use of firefighting foam containing PFAS in training exercises on military bases. The Defense Department has yet to find a commercially available foam without PFAS that's effective enough in fighting aircraft fires, however, Sullivan said.

Bloomberg Environment

House Moves Toward Big Expansion of Wastewater Grants

<https://news.bloombergenvironment.com/environment-and-energy/house-moves-toward-big-expansion-of-wastewater-grants-1>

David Schultz

Posted: March 7, 2019, 1:05pm

- Legislation would more than double amount that could be spent on grants
- Bill has bipartisan support in House, but Senate prospects uncertain

A bill that would more than double the size of an EPA wastewater grant program has bipartisan support in the House and received ample praise at a March 7 congressional hearing.

The bill, [H.R. 1497](#), would allow Congress to appropriate \$4 billion annually to the State Revolving Fund, which helps offset the costs of wastewater infrastructure loans to utilities.

The grant program receives less than \$1.5 billion from Congress in a typical year.

Andrew Kricun, executive director of the Municipal Utilities Authority in Camden County, N.J., said utilities like his can't afford major capital projects without the low-cost financing available through the State Revolving Fund, which offers interest rates of less than 1 percent.

"That makes the difference between go and no-go," Kricun told a House Transportation and Infrastructure subcommittee hearing.

Better Rates

Rep. Peter DeFazio (D-Ore.), chairman of the full committee, said the fund shows why Congress should allocate more dollars for water infrastructure rather than trying to boost public-private partnerships.

"There is no one that will lend you money at less than 1 percent in the private sector," DeFazio said.

Besides expanding the State Revolving Fund, H.R. 1497 would create grant programs that would give \$1.5 billion to states and another \$900 million to cities that are struggling to bring their sewage and stormwater systems into compliance with federal water pollution laws.

The House passed a similar bill in the past two sessions in which Democrats were in the majority back in 2007 and 2009. The Senate didn't take up the bills in either instance, even though Democrats controlled the upper chamber at that time.

Republicans now control the Senate.

And even though H.R. 1497 has two Republican backers in the House, other Republicans said more attention should be paid to what they said are excessively strict environmental regulations that drive up the costs of water.

“I don’t think that just throwing money at the problem is always the answer,” said Rep. Bruce Westerman (R-Ark.), the top Republican on the committee’s Water Resources and Environment Subcommittee. “I think that we can be smarter about the policies we put in place.

Rep. Grace Napolitano (D-Calif.), the chair of the subcommittee and the one of the bill’s cosponsors, said there are no particular senators she is talking to about this legislation but that she hopes the testimony at the March 7 hearing “reaches their ears.”

(Adds comment from Rep. Grace Napolitano in the final paragraph.)

To contact the reporter on this story: David Schultz in Washington at dschultz@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Jean Fogarty at jfogarty@bloombergenvironment.com; Rob Tricchinelli at rtricchinelli@bloombergenvironment.com